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**James B. Day & Co. and Sign, Display, Pictorial Artists & Allied Workers, Local 830, AFL-CIO.**  
Case 13-CA-40366

September 23, 2003

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

The General Counsel seeks a default judgment<sup>1</sup> in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and first amended charge filed by the Union on July 25 and August 29, 2002, respectively, the General Counsel issued the complaint on August 29, 2002 against James B. Day & Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On December 24, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On December 31, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 18, 2002, notified the Respondent that unless an answer were received by November 29, 2002, a Motion for Default Judgment would be filed.

<sup>1</sup> The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a Motion for Default Judgment.

In the absence of good cause being shown for the failure to file a timely answer,<sup>2</sup> we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Illinois corporation, with an office and place of business in Carpentersville, Illinois, has been engaged in the manufacturing of paint related materials.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Carpentersville, Illinois facility goods valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which other enterprises has received these goods directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Jack Stritt, president/owner, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer out of its facilities currently located at 1 Day Lane, Carpentersville, Illinois; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

At all material times, the Union has been the designated collective-bargaining representative of the unit described above and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agree-

<sup>2</sup> By letter dated November 20, 2002, the Respondent confirmed an earlier telephone conversation with counsel for the General Counsel that it had filed for Chapter 7 bankruptcy protection. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

ments, the most recent of which is effective by its terms from October 31, 2000 through October 31, 2003 (agreement).

At all material times, the Union by virtue of Section 9(a) of the Act, has been, and is, the exclusive bargaining representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The agreement described above covers terms and conditions of employment of the unit, and was to remain in effect until October 31, 2003, and year to year thereafter unless either party served the other party with at least 60 days' notice of its desire to terminate on October 31, 2003.

Since about August 1, 2002, the Respondent has failed to continue in effect all the terms and conditions of the agreement by terminating the health insurance, life insurance, dental insurance, and COBRA policies for all bargaining unit and laid-off employees as required by article XV of the agreement. The Respondent engaged in this conduct without the Union's consent, notwithstanding that the foregoing terms and conditions of employment relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain with the exclusive collective-bargaining representative of the employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to restore the health insurance, life insurance, dental insurance, and COBRA policies for bargaining unit and laid-off employees as required by article XV of the agreement. In addition, the Respondent shall reimburse the unit and laid-off employees for any expenses ensuing from its failure to continue the contractually required health insurance, life insurance, dental insurance, and COBRA policies, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir.

1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, James B. Day & Co., Carpentersville, Illinois, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the October 31, 2000–October 31, 2003 collective-bargaining agreement by terminating the health insurance, life insurance, dental insurance, and COBRA policies for bargaining unit and laid-off employees as required by article XV of the agreement. The appropriate unit is:

All production and maintenance employees employed by the Employer out of its facilities currently located at 1 Day Lane, Carpentersville, Illinois; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the health insurance, life insurance, dental insurance, and COBRA policies for all bargaining unit and laid-off employees as required by article XV of the agreement.

(b) Reimburse the unit and laid-off employees for any expenses ensuing from its failure to continue the contractually required health insurance, life insurance, dental insurance, and COBRA policies since August 1, 2002, as set forth in the remedy section of this Decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Carpentersville, Illinois, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice,

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 23, 2003

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of our October 31, 2000–October 31, 2003 collective-bargaining agreement with Sign, Display, Pictorial Artists & Allied Workers, Local 830, AFL–CIO, by terminating the health insurance, life insurance, dental insurance, and COBRA policies for bargaining unit and laid-off employees as required by article XV of the agreement. The appropriate unit is:

All production and maintenance employees employed by us out of our facilities currently located at 1 Day Lane, Carpentersville, Illinois; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the health insurance, life insurance, dental insurance, and COBRA policies for all bargaining unit and laid-off employees as required by article XV of the agreement.

WE WILL reimburse the unit and laid-off employees for any expenses ensuing from our failure to continue the contractually required health insurance, life insurance, dental insurance, and COBRA policies since August 1, 2002, with interest.

JAMES B. DAY & CO.